**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.2011 OF 2004**

SRG Human Resources Development
Ltd & Ors. ...
Petitioners

V/s.
Ramlal V. Shah & Anr. ...Respondents

Mr.Indrajeet Joshi for Petitioners.
Mr.Subhodh Desai for Respondent No.1.
Mr.Y.S. Shinde APP for the State.

**ALONGWITH**
**CRIMINAL WRIT PETITION NO.2735 OF 2004**

Ramanlal V. Shah ...Petitioner

V/s.
State of Maharashtra & Ors. ...Respondents

Mr.Subhodh Desai i/b. Lalit S. Jain for Petitioner.
Mr.Y.S. Shinde APP for the State/Respondent No.1.
Mr.Indrajeet Joshi for Respondent No.2.

**CORAM : V.M. KANADE, J.**
**DATED : 28th AUGUST, 2007.**

**P.C:-**

1. Petitioners in Writ Petition No.2011/04 are the original accused No.1 and 4 to 7 have filed this Writ Petition under Article 227

of Constitution of India and 482 of Cr.P.C for quashing impugned order passed by the Additional Chief Metropolitan Magistrate 40th Court, Girgaon, Mumbai, dated 7th July, 2004. Writ Petition No.2735/04 is filed by the original Complainant challenging the order dated 7th July, 2004 passed by the learned Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, recalling the process which was issued earlier in the same Court by order dated 28th February, 2003. Since the parties in both these Writ Petitions are the same and they are challenging the same order passed by the Magistrate, these Writ Petitions can be disposed of by a common order.

2. Brief facts which are relevant for the purpose of deciding these Writ Petitions are as under:-

The Complainant filed a complaint in the Court of Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai U/s.138 of N.I. Act. The learned Magistrate by the order dated 28th February, 2003 was pleased to issue process U/s.138 of N.I. Act. Accused filed an application recalling the process. The learned Magistrate by the order

dated 7th July, 2004 was pleased to recall his earlier order by issuance of process U/s.138 of N.I. Act. However, the learned Magistrate was of the opinion that, from the averments made in the complaint, offence, prima facie, punishable U/s.420 r/w 34 of IPC was made out and therefore, directed the process to be issued against the Accused under the aforesaid provisions. Being aggrieved by the said order, both the Complainant and the Accused have filed these two Writ Petitions before this Court.

3. Learned counsel appearing on behalf of the Complainant submitted that in view of judgment of the Apex Court in the case of **Adalat Prasad V/s. Rooplal Jindal & Ors. reported in 2004(4) Mh.L.J. 274**, it was not open for the Magistrate to have recalled his own order as the Accused has an alternate remedy by either filing an application before this Court U/s.482 of Cr.P.c. or to file a revision application in the Sessions Court.

4. Learned counsel for the Accused, on the other hand, submitted that if the submissions made by the learned counsel

appearing on behalf of the Complainant was accepted, even order of issuance of process U/s.420 r/w 34 of IPC was liable to be set aside. Learned counsel for the Complainant submitted that the order of issuance of process U/s.420 r/w 34 of IPC was an independent order and was not related to the application for recalling the process, made by the accused. It is submitted that the said order was not liable to be recalled.

5. In my view, ratio of the judgment in the case of **Adalat Prasad**(Supra) would squarely apply to the facts of the present case. Order, therefore, will have to be recalled in its entirety and it is not possible to recall order in piecemeal manner. Hence, order passed by the Trial Court dated 7th July, 2004 is quashed and set aside. Liberty is granted to the Accused to challenge the order of issuance of process U/s.138 of N.I. Act by filing a revision application in the Sessions Court. If such an application is filed within four weeks from today, Sessions Court shall consider the application on merits and in accordance with law. It is open for the Complainant to make a suitable application

before the Magistrate for issuance of process U/s.420 r/w 34 of IPC. If such an application is filed, the Trial Court shall consider the same on merits and in accordance with law. All contentions raised by both the parties are kept open. With these directions, both the Writ Petitions are disposed of.

6. Stay, if any, granted by this court shall stand vacated. The Trial court shall not proceed with the complaint for a period of four months in order to enable the learned counsel for the Accused to move the Sessions Court.

**V.M. KANADE, J.**